

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HERMAN KELLEY and BESSIE BANKS,

Plaintiffs,

v.

THE UNIVERSAL MUSIC GROUP,
ISLAND DEF JAM RECORDS, DESERT
STORM RECORDS, and KILLA RECORDS,

Defendants.

Case No. 14-CV-2968 (PAE)

**DECLARATION OF NICOLE
WYSKOARKO IN SUPPORT OF UMG
RECORDINGS, INC.'S MOTION TO
DISMISS THE AMENDED COMPLAINT
OR IN THE ALTERNATIVE FOR
SUMMARY JUDGMENT**

I, Nicole Wyskoarko, declare as follows:

1. I am a Senior Vice President of Business & Legal Affairs for UMG Recordings, Inc. ("UMG"), including its unincorporated division, Def Jam Recordings. The contents of this declaration are within my personal knowledge. If called as a witness in this action, I could and would testify competently to the contents of this declaration.

2. I understand that the plaintiffs in this action have alleged that defendants Desert Storm Records and Killa Records are either subsidiaries or affiliates of UMG. That is not true. Neither is a subsidiary or affiliate of UMG.

3. Although I have no knowledge of the entity named "Killa Records," I am aware that Desert Storm Records, Inc. ("DSR") is an independent record label that originally signed John Davis Jackson (professionally known as "Fabolous") to a recording agreement in or around 2002. As far as I am aware, Mr. Jackson still has a contractual relationship with DSR. In turn, DSR entered into a separate contractual arrangement with UMG in or around 2006 through which it furnishes Mr. Jackson's services as a recording artist, and delivers his recordings, exclusively to UMG (a so-called "furnishing agreement") in exchange for a percentage of the net

proceeds on sales of Mr. Davis's recordings released by UMG. But, again, UMG's relationship with DSR is purely contractual; DSR is not an affiliated label, nor does UMG have any ownership or other interest in DSR.

4. I also understand that the allegations in this action relate to a sound recording entitled "For the Love," as well as two compact discs—or "mix tapes"—entitled "The Soul Collection" and "S.O.U.L. Tape 2" (together, the "Projects"), on which the recording "For the Love" is allegedly featured. It is also my understanding that Mr. Jackson—who performs in the hip hop musical genre—is the featured performer on the Projects.

5. It is not uncommon for hip hop artists to release so-called "mix tapes" independently to maintain a certain level of "street buzz" and credibility, even though the artist may be signed to a major record label. Accordingly, although Mr. Jackson's services are furnished to UMG's Def Jam Recordings label through DSR, UMG played no role in either the creation or exploitation of the sound recording "For the Love," nor in the Projects on which Mr. Jackson allegedly performed "For the Love."

6. Indeed, UMG never accepted delivery of either of the Projects on which the sound recording "For the Love" is featured.

7. To demonstrate the point, attached as Exhibit A to this declaration is a true and correct copy of a printout from UMG's Central Catalog System (which is part of UMG's business-to-business sales system through which retailers may order products) ("the Catalog"), reflecting all of the full album projects by Mr. Jackson that UMG claims ownership rights in and exploits. Attached hereto as Exhibit B is a printout from UMG's comprehensive Rights Management Database (known as "R2"), which reflects not only full album projects in all configurations released (*i.e.*, CDs, vinyl LPs, digital only), but also any track "singles," as well

as digital ringtones, album art “wallpaper,” and any other assets delivered by DSR or Mr. Jackson for exploitation by UMG. The Catalog and R2 systems are maintained by UMG in the ordinary course of its business. As reflected, neither the Catalog nor the R2 listing reflects UMG’s claimed ownership or exploitation of either “For the Love” or the Projects.

8. Accordingly, UMG never released, otherwise exploited, or received any income from the Projects, or from the sound recording entitled “For the Love.”

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 2nd day of June 2015 in New York, New York.

By: 
Nicole Wyskoarko